IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT:
THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 22368 of 2000

Between:

1) Mrs. Khurshid Shapur Chenai, w/o. late Shapur Rasheed Chenai,

R/o. 5-9-22/1, Shapurwadi, Hyderabad

2)K.Satyanarayana, s/o. K.Veeroji, r/o. 8-3-389/1/3,

Yellareddyguda, Ameerpet, Hyderabad

..... PETITIONER

AND

1 Government of Andhra Pradesh, rep. by its Secretary, Industries Dept., Secretariat buildings, Hyderabad

2 The Land Acquisition Officer, Land Acquisition, Industries, Domalguda, Hyderabad.

3 The Special Officer, Urban Land Ceiling, Govt. of Andhra Pradesh, Hyderabad.

4 The District Collector, Ranga Reddy district at Hyderabad.

5 The Joint Collector, Ranga Reddy district at Hyderabad

6 Inams Tribunal-cum-Revenue Divisional Officer, Chevella division, Domalguda, Hyderabad

7 The Mandal Revenue Officer, Balanagar mandal, Balanagar, Hyderabad.

8 Andhra Pradesh Industrial Infrastructure Corporation Ltd., Hyderabad, rep. by its Managing Director **.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings of the Joint Collector, R.R. district, dated 18.4.1998 in No.B3/3019/96 as illegal, null and void; and consequently direct the respondents herein to complete the land acquisition proceedings and pay compensation to the petitioners for the lands acquired in survey no.352, 355, 356, 357 and 358 admeasuring Ac.41.24 guntas situated at Kukatpally village, Balanagar mandal, Ranga Reddy district.

Counsel for the Petitioner: MR. K.Durga Prasad

Counsel for the Respondents 1 to 7 : GP for Revenue

Counsel for the Respondent no.8: Mr. R.Subba Rao.

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 22368 of 2000

O R D E R :

Heard Sri K.Durga Prasad, learned counsel for the petitioner and the learned Government Pleader appearing for respondents 1 to 7 and Sri R.Subba Rao, learned Standing Counsel appearing on behalf of the respondent no.8.

In this Writ Petition filed by petitioners 1 and 2, of which the first petitioner claiming to be pattadar of the lands in question and the second petitioner claiming to be an agreement holder from the first petitioner, the petitioners seek a Writ of Mandamus declaring the impugned proceedings dated 18.04.1998 passed by the fifth respondent, the appellate authority, dismissing the appeal filed by the petitioners, as bad, illegal and void.

The case of the petitioners is that the first petitioner is the pattadar and was the possessor of the lands in survey nos. 352, 355, 356, 357 and 358 which totally admeasure to Ac. 41.24 guntas situated in Kukatpally village, Balanagar mandal, Ranga Reddy district. The first petitioner alleges that he had entered into an agreement with the second petitioner and the entire sale consideration was already paid. However, it was pointed out that the eighth respondent, which is a corporation, had in fact, taken possession of the said lands on 04.03.1975 and constructed industrial sheds required for the corporation, though no acquisition proceedings as contemplated under Law, were initiated. Thereafter, at the instance of eighth respondent, proceedings have been initiated under the provisions of the Land Acquisition Act and accordingly, a notification under Section 4(1) thereof, was issued in the Gazette dated 28.01.1983. This was followed by notice issued under Sections 9(1) and 10(3) of the Land Acquisition Act from the Second Respondent. It is stated that both the petitioners herein submitted their claims before the Land Acquisition Officer. Under the provisions of the Urban Land Ceiling Act, 1976, the first petitioner filed required declaration before the competent authority showing all his lands excluding the aforesaid extent of Ac. 41.24 guntas. However, the Government had issued notification for withdrawal of the acquisition proceedings as per the Gazette no.124, dated 12.03.1986 stating that the land in question belongs to the Government. The said withdrawal proceedings were challenged successfully by the second petitioner in Writ Petition No. 4367 of 1986 in this Court, which was allowed on 26.03.1986, and the same was confirmed by Division Bench of this Court as per the Order in Writ Appeal No. 791 of 1987, dismissing the appeal on 14.07.1987. As against the said order, the Government carried the matter in further appeal to the Supreme Court in S.L.P. No.15814 of 1987, which was disposed of on 18.04.1990 by taking note of the subsequent proceedings initiated under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act (Act 8 of 1955) with a direction to the primary authority viz. the Revenue Divisional Officer / Inam Tribunal, Chevella Division, Hyderabad to dispose of the

proceedings after conducting enquiry. Thereafter, the said Tribunal, as per the order dated 25.01.1996, allowed the claim of the Mandal Revenue Officer holding that the land in question is a Government land, rejecting the claim of the petitioners herein. The petitioners filed a regular appeal before the appellate authority viz. the fifth respondent herein, which was dismissed as per the impugned proceedings dated 18.04.1998. Hence, this Writ Petition.

The main grievance of the petitioners challenging the correctness of the rejection of their claim, is that the appellate authority did not consider the matter on merits and no valid reasons nor any findings in support thereof, are given in the impugned proceedings, and further that many of the documents showing the possession of the petitioners, which is the basic relevant factor for considering grant of occupancy rights, have not been taken into consideration properly and from proper perspective. It was further submitted that having regard to the fact that the eighth respondent has taken possession on 04.03.1975 itself i.e. much prior to the enactment of the Urban Land Ceiling Act, 1976, it will not come within the mischief of the said provisions.

The learned Government Pleader and the learned Standing Counsel sought to support the concurrent findings given by both the authorities viz. the respondents 6 and 5, rejecting the claim of possession of the petitioners, which, being a purely question of fact, could not possibly be gone into in these proceedings, and further the land being that of Government, no claim as sought for, is valid and sustainable on behalf of the petitioners.

Considering the submissions made and on perusal of the material, the two aspects which require to be focused for a decision, are that firstly as to whether the claim of the petitioners as pattadar and occupancy rights basing on possession on the relevant date, is

sustainable, and secondly as to whether the orders of both the authorities viz. the respondents 6 and 5, under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act (Act 8 of 1955), are valid ?

There is no dispute to the chequered events as pointed out from both the sides and also the initiation of the proceedings under the Act 8 of 1955. The petitioners herein claim their exclusive proprietary rights based upon patta of the first petitioner under an agreement in favour of the second petitioner. It is their case that even much prior to the enforcement of the Urban Land Ceiling Act, 1976, the eighth respondent, a statutory corporation, had taken over possession of the lands, though without initiation of the proceedings under the Land Acquisition Act, and made substantial pucca constructions of industrial sheds. It is only thereafter at the instance of the eighth respondent itself, the proceedings were initiated by issuance of notification under Section 4(1) of the Land Acquisition Act, on 28.01.1983, and both the petitioners have made their claims in response to the notice issued under Sections 9(1) and 10(3) of the Land Acquisition Act. There was no finality in those proceedings nor any award was passed. However, the Government took the recourse of withdrawing the acquisition proceedings by issuing withdrawal notification on 12.03.1986 on a premise that the lands belong to the Government which was ultimately, on being challenged, quashed by this Court in Writ Petition No. 4367 of 1986 on 26.03.1986 and the said order was confirmed by a Division Bench of this Court in Writ Appeal No. 791 of 1987 on 14.07.1987. These orders were challenged in the Supreme Court in S.L.P. No. 15814 of 1987, which was disposed of on 18.04.1990 whereunder by taking note of the proceedings initiated under the provisions of the Act 8 of 1955 at the instance of the concerned Mandal Revenue Officer itself to declare the lands as Government lands and also where the claim was being made on behalf of the petitioners for grant of occupancy rights on the basis of possession, the Apex Court directed that the said

proceedings should be given finality and until then the Land Acquisition proceedings shall not be proceeded with. It was also taken note of the fact that the earlier orders passed by the primary authority i.e. the sixth respondent herein, were exparte, and therefore, a fresh enquiry was ordered directing the parties to appear before the said primary authority. Accordingly, both sides appeared before the said authority and submitted their claims, documents, etc. The rival claims as raised before the authority was as to whether the land belongs to the Government or the petitioners are the pattadars, and also whether they are entitled to occupancy rights on the basis of possession on the relevant dates. It is seen from the order passed by the sixth respondent herein on 25.01.1996, that greater pains were taken more in extracting the chequered events and proceedings all along at a greater length, and ultimately though certain pahanis were showing the possession of first petitioner, but the said lands being shown as kancha lands kept fallow for grazing purposes and also that the subsequent pahanis do not bear the entries of possession in favour of the petitioners, it was held that the lands were never cultivated and never used for grazing purposes and therefore, they could not attract any occupancy rights as claimed by the petitioners in view of the Act 8 of 1955, ultimately holding that survey no.352 is a patta land and all other survey numbers are grazing lands and they are vested in the Government and therefore, for any of these lands, occupancy rights can not be granted in favour of the petitioners. In appeal before the fifth respondent, which is the appellate authority as per the provisions of the Act 8 of 1955, the same was dismissed holding that having regard to the direction of the Supreme Court in the above S.L.P. No. 15814 of 1987, dated 18.04.1990, an elaborate enquiry was conducted by the sixth respondent after giving opportunity to all the parties and after verifying the entire records, the claim of the petitioners for grant of occupancy rights was rightly rejected since they are grazing lands and never cultivated, and therefore, no patta can be granted. Hence, in the light of the findings of the Inams Tribunal, the appeal was disposed of.

On a bare reading of the order of the appellate authority, it is curious to note that except extracting the findings of the primary authority and observations made by it in regard to entries of possession in the pahanis, which show the names of first petitioner as occupant for the years 1973-1974 and others, but the same being not continuous and therefore, the findings were held to be sufficient enough to dismiss the appeal. It is to be observed that having regard to the rival claims made, the twin questions which arose in these proceedings as directed by the Supreme Court, are as to whether the lands belong to the Government or the petitioners on one aspect, and the other as to whether the petitioners' occupancy rights based on possession can be given effect to. Necessarily, it calls for a detailed enquiry into the proprietary rights, title of both sides viz. the Government as well as the petitioners vis-à-vis the question as to the entitlement of the petitioners for grant of occupancy based on possession. Further, it is to be noticed that though it is claimed that the nature of the lands is that of inam – a dast garden, there is no attempt from either side or even by the authorities concerned to trace out the origin, grant, grantor, etc. In fact, though at one stretch it is claimed by the Government that it is an inam land and on the other side, it is claimed that it is a Government land. Now, the finding of the primary authority which is sought to be upheld as the right one, is that it is a grazing land and therefore, no occupancy rights can be granted. Apart from the various inconsistencies in the very stand and approach by the parties, there is absolutely no concentrated effort made to go into the aforesaid real questions arising in this matter. It is further to be noticed that admittedly the first petitioner was found to be in possession in some of the revenue records and there is no other person claiming to be in possession in contradiction to that of the petitioners. Even the possession of the petitioners in the relevant years, has not been explained by the Government. It can not be said that the first petitioner has simply came into possession and has

been dispossessed. Even by accepting the principle of tracing the possession both forward and backward, the same entries could have been validly pressed into service. In view of the fact that there is no such proper enquiry by the primary authority and absolutely no enquiry into all these questions by the appellate authority, the matter requires reconsideration of the entire issue from proper perspective. It is also to be noticed that except putting seal on the findings given by the primary authority, no effort has been made by the appellate authority to focus these issues vis-à-vis the material produced from either side to come to any conclusion of its own. In fact, there is no conclusion of its own by the appellate authority, except holding that the findings of the primary authority are sufficient enough to dismiss the appeal. In view of the same, it is to be held that the matter requires to be reconsidered afresh by the appellate authority. In view of the aforesaid findings and reasons given, it is not necessary to go into the questions as framed.

The Writ Petition is, accordingly, allowed, setting aside the impugned order. The matter is remitted back to the appellate authority viz. the fifth respondent, for fresh disposal on merits and in accordance with law after giving notice and opportunity to both sides. No costs.

(B.Prakash Rao,J.)

17.01.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on

Monday, the Seventeenth day of January, Two thousand and five.

….. Registrar

Copy to:

1 The Secretary, Industries Dept., Government of Andhra Pradesh, Secretariat buildings, Hyderabad

2 The Land Acquisition Officer, Land Acquisition, Industries, Domalguda, Hyderabad.

3 The Special Officer, Urban Land Ceiling, Govt. of Andhra Pradesh, Hyderabad.

4 The District Collector, Ranga Reddy district at Hyderabad.

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7 The Mandal Revenue Officer, Balanagar mandal, Balanagar, Hyderabad.

8 Andhra Pradesh Industrial Infrastructure Corporation Ltd., Hyderabad, rep. by its Managing Director

9 Two CCs to the G.P. for Revenue, High Court of A.P., High Court buildings, Hyderabad (o.u.t.)

10 Two CD copies.